CASE NO.: 15-13224

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

G4S REGULATED SECURITY SOLUTIONS, A DIVISION OF G4S SECURITY SOLUTIONS (USA) INC., F/K/A THE WACKENHUT CORPORATION,

Petitioner/Cross-Respondent,

V.

NATIONAL LABOR RELATIONS BOARD,

Respondent/Cross-Petitioner.

ON APPEAL FROM THE NATIONAL LABOR RELATIONS BOARD
REGION 12
CASE NOS. 12-CA-026644 and 12-CA-026811

PETITION FOR PANEL REHEARING

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record for Petitioner/Cross-Respondent G4S Regulated Security Solutions, A Division of G4S Security Solutions (USA) Inc., F/K/A The Wachenhut Corporation, certifies that the following listed parties have an interest in the outcome of this case:

1. Cherof, Edward M. (Attorney for Petitioner/Cross-Respondent)
2. Diaz, Margaret J. (Regional Director, National Labor Relations Board, Region 12)
3. Finnerty, Terry (counsel for Petitioner/Cross-Respondent)
4. Frazier, Thomas (Charging Party)
5. G4S Regulated Security Solutions, A Division of G4S Secure Solutions (USA) Inc., F/K/A The Wackenhut Corporation (Petitioner/Cross-Respondent) (GFSZY)
6. Hirozawa, Kent Y. (Member)
7. Jackson Lewis P.C. (Attorneys for Petitioner/Cross-Respondent)
8. Mark, Cecil (Charging Party)
9. Miscimarra, Phillip A. (Member)
10. National Labor Relations Board (Respondent/Cross-Petitioner)
11. Pearce, Mark Gaston (Chairman)

12. Plas, Shelley B. (Counsel for the Acting General Counsel, National Labor Relations Board)

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14. Schwartz, Jeffrey A. (Attorney for Petitioner/Cross-Respondent)

15. Spitz, Jonathan J. (Attorney for Petitioner/Cross-Respondent).

Pursuant to Eleventh Circuit Rules 26.1-1, 26.1-2, 26.1-3, and 28-1(b), and Fed. R. App. P. 26.1, G4S identifies the following subsidiaries, conglomerates, affiliates and parent corporations:

1. G4S Regulated Security Solutions is a division of G4S Secure Solutions (USA) Inc. G4S Secure Solutions (USA) Inc. a wholly-owned subsidiary of G4S Holding One, Inc. ("G4SHO"), a Delaware corporation.

2. G4SHO is a wholly owned subsidiary of G4S US Holdings Limited (G4SUSH), a British company. G4SUSH is a wholly owned subsidiary of G4S Corporate Services Limited (G4SCS), a British company. G4SCS is a wholly owned subsidiary of G4S plc, a British company publicly traded on the London Stock Exchange. It is also publicly traded on the Over the Counter (OTC) Exchange in the United States using the ticker symbol GFSZY.

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I. ISSUES

A. Whether the Panel erroneously failed to follow binding precedent in finding G4S did not meet its burden of proof that lieutenants had the authority to responsibly direct and, therefore, were supervisors under Section 2(11) of the National Labor Relations Act.

B. Whether the Panel erroneously determined the National Labor Relation Board's ("Board") conclusions were based on substantial evidence on the record as a whole when the Board failed to mention or consider, much less address, all of the relevant, undisputed facts on the record.

II. COURSE OF PROCEEDINGS AND CASE DISPOSITION

Thomas Frazier and Cecil Mack filed unfair labor practice charges with the National Labor Relations Board ("Board") on February 22 and July 29, 2010, respectively. A hearing was held before an Administrative Law Judge ("ALJ") on April 4-6, 2011. In a decision dated June 27, 2011, the ALJ found Frazier and Mack were supervisors under the National Labor Relations Act (the "Act") and, as a result, dismissed the Complaint, finding it unnecessary to address whether their terminations violated the Act.

In a decision dated September 28, 2012, the Board overruled the ALJ's decision, finding Frazier and Mack were statutory employees and remanding the case for a supplemental decision regarding alleged violations of the Act. On

November 16, 2012, the ALJ found G4S unlawfully discharged Frazier and Mack. The Board affirmed that decision on April 30, 2013.

G4S filed a petition for review in the District of Columbia Circuit Court. In response to *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014), the Board filed a motion to dismiss, which was granted on August 18, 2014.

On June 25, 2015, the Board issued a decision affirming its earlier decisions. On July 17, 2015, G4S filed a Petition for Review in this Court and the Board filed a Cross-Application for Enforcement. After oral argument was held, this Court issued a per curiam decision on November 21, 2016, a copy of which is attached, denying G4S's Petition, granting the Board's Cross-Petition and affirming the Board's decision.

III. RELEVANT FACTS

G4S provides security to Florida Power & Light (FP&L) at the Turkey Point nuclear power plant. (G4S Appendix, Volume[1] I, Exhibit E, Transcript Excerpts ("Transcript") at 73-74, 315-317.) Frazier and Mack were employed by G4S as lieutenants at this site, with the responsibility to supervise and oversee security officers as part of G4S's "military-type" security force. (Transcript at 157, 216, 316.)

[1] All references to "Volume" hereafter refer to volumes of G4S's Appendix.

A. Lieutenants Held Accountable for Performance of Subordinates

In late 2009, in response to FP&L's concerns about quality, G4S implemented a program designed to review all levels of management at all of the FP&L sites at which it provided security services at that time, including the Turkey Point site. (Transcript at 111-112, 391-392.) As set forth in the outline of the Leadership Effectiveness Program that was the first step of the review process for each supervisor, one of the five criteria to be considered was the performance of the supervisors' respective teams. (Volume III, Tab 35.)

As spelled out in greater detail in the five page reviews conducted of each supervisor, (Volume III, Tab 36), the scope of the review of that criterion was based on an evaluation and review of the performance of the group of people led by that supervisor as an overall team, the individual performance of the team members, and each team member's disciplinary records.

Each supervisor was then scored on each of those items, as well as the rest of the five criteria. Then, the supervisors in the bottom 20%, which included Frazier and Mack at the Turkey Point site, were automatically slated for further review - a process that ultimately resulted in the termination of everyone in the bottom 20% at this site. (Transcript at 46-47, 128, 393.) As such, the undisputed record evidence shows that all of the lieutenants, including Frazier and Mack, were

scored on the performance of their subordinates and held accountable based on that performance in a tangible way.

B. An Environment Designed To Encourage and Require Everyone To Bring Issues To Management's Attention

G4S has numerous processes by which employees are encouraged to bring issues to the attention of management, including every issue allegedly raised by Frazier and Mack. (Transcript at 349-351, 391.) Frazier and Mack claim they were discharged because they raised these issues on behalf of their subordinate officers. The Company's commitment to a "Safety Conscious Work Environment" ("SCWE") evidences otherwise.

Under SCWE, all "employees are responsible for maintaining a questioning attitude and promptly notifying [m]anagement of all concerns and issues that relate to Nuclear Safety." (Volume II, Tab 19 at 2.) "[A] SCWE is an environment in which employees feel free to raise issues both to their own management and the NRC [Nuclear Regulatory Commission] without fear of retaliation and in which those issues are prioritized and promptly resolved with feedback to the employee." (Volume II, Tab 20 at 3.) The scope of SCWE is extremely broad and includes virtually any issue of concern to an employee. (Transcript at 350-351.)

Under SCWE, lieutenants and other supervisors are required to relay issues raised by security officers up the chain and, if possible, attempt to resolve those issues independently. (Transcript at 89-91, 225, 319.) Lieutenants are further

"responsible to maintain open communication with the security personnel under their command and receive and address concerns and issues enthusiastically and work to promptly resolve them." (Volume II, Tab 19 at 2, Tab 21 at 3-16; Transcript at 352-357.)

As part of SCWE, G4S conducts quarterly surveys. (Transcript at 353-354.) Employees provide anonymous answers to questions concerning whether they feel they "can discuss issues with [their] supervisors and management knowing that [their] input will remain confidential" and whether "site management supports [SCWE]." (Volume II, Tab 22 at 2.) Employees also may anonymously identify other issues of concern. (*Id.* at 3; Transcript at 353-354.) Based on the results of the surveys, each nuclear facility at which G4S provides security services receives a score. (Transcript at 353-354.) If the score is inadequate, the facility must develop a corrective action plan. (Transcript at 356.)

In about 2009, Mareth and Leadership Development Manager Karen Bower MacDonald determined they needed to do more to help employees understand SCWE. (Transcript at 108, 369.) MacDonald created a PowerPoint which was presented in June 2009. Mareth (or Operations Manager Rodriguez) held Question and Answer Sessions with employees to solicit issues of concern. (G4S Appendix, Volume II, Tabs 24, 26; Transcript at 372.)

Mareth, MacDonald and Rodriguez then prepared a list of issues, called "The First 48." (Transcript at 370.) The list is a "living document," revised over time to reflect progress on various issues, first posted in the fourth quarter of 2009. (Transcript at 370-371; Volume II, Tabs 25-26, 46.) Many of the issues supposedly raised by Frazier and Mack appear in The First 48. (Transcript at 370-371; G4S Volume II, Tabs 25 and 46 at #29 ("Replace current vest with a more breathable one"), #34 ("Ensure 'Porta-lets' are clean"), #36 ("replace the North End port-o-let with a quality facility")).

In December 2009, G4S provided to employees a document outlining actions it had taken in the last half of 2009 as part of these additional efforts. (Transcript at 371-372; Volume II, Tab 26.)

SCWE not only is important to G4S, it also is required by G4S' contract with FP&L and the NRC. (Transcript at 107, 350-351.) Pursuant to the contract, if G4S is not adequately creating an environment where employees are comfortable raising issues of concern, G4S is paid less. (Transcript at 351.) In fact, the Project Manager's compensation is tied to SCWE. (Transcript at 352.)

In addition to SCWE, there are other processes by which employees regularly raise various issues of concern. First, employees can file Condition Reports raising virtually any issue, including each of the issues allegedly raised by Frazier and Mack. (Transcript at 175, 380-381.) Numerous employees and

supervisors, including lieutenants, submitted Condition Reports on a variety of issues. (Transcript at 381.)

In addition, G4S conducts Safety Meetings at which employees regularly raise concerns, and possible resolutions are discussed and tracked. As reflected in minutes of meetings held during the relevant period of time, issues supposedly raised by Frazier and Mack also were raised and discussed at various Safety Meetings. (Transcript at 385-390.)

Finally, employees have raised issues through G4S' Safe to Say program and Employee Concerns Hotline, as well as by informal verbal or email complaint. (Transcript at 383.)

In sum, the record is clear that employees and supervisors at all levels consistently have brought a litany of issues and concerns to management. (Transcript at 250, 395.) It is also undisputed Frazier and Mack did so for years. As Frazier explained, "I've been bringing up issues to management ever since I started working out there over 20 years ago. I've never had a problem speaking to management, bringing up concerns that needed to be addressed, so it continued throughout my entire tenure at Turkey Point." (Transcript at 168.) Mack also testified he has been raising issues since his hire in 2002, and that everyone "spoke out" at security briefings. (Transcript at 276.)

IV. ARGUMENT

A. The Authority to Responsibly Direct

The threshold issue in this case is whether the lieutenants, including Frazier and Mack, are supervisors under Section 2(11) of the National Labor Relations Act (the "Act"). 29 U.S.C. § 152(11). An individual is a supervisor if "(1) he…has the authority to perform one of the twelve supervisory functions described in the statute; (2) the exercise of that authority requires the use of independent judgment; and (3) such authority is held in the interest of the employer." *Lakeland Healthcare v. NLRB*, 696 F.3d 1332, 1336 (11th Cir. 2012) (internal citations omitted).

G4S only has to establish one of the twelve supervisory functions listed in Section 2(11) of the Act to resolve this issue (and the entire case) in G4S's favor. *Id.* at 1336. The authority to responsibly direct others is one type of supervisory authority under the Act. 29 U.S.C. § 152(11). Based on the undisputed record evidence in this case, this issue can, and should, be resolved based on binding precedent, specifically, this Court's decision in *Lakeland*, *supra*.

In *Lakeland*, it was undisputed the putative supervisors – the licensed practical nurses ("LPNs") – had the authority to direct the certified nursing assistants ("CNAs") and that the LPNs exercised independent judgment in doing so. The issue was whether the LPNs exercised that discretion responsibly. *Id.* at

1343. As this Court explained, "for direction to be 'responsible,' the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequences may befall the one providing the oversight if the tasks performed by the employee are not performed properly." *Id.* at 1344, *quoting Oakwood Healthcare, Inc.*, 348 NLRB 686, 691-692 (2006).

In *Lakeland*, the written job description strongly indicated that LPNs were accountable for the performance of the CNAs, explicitly stating that the LPNs supervised the CNAs and that the LPNs' "essential duties" included directing the day-to-day functions of the CNAs and ensuring the CNAs complied with all applicable guidelines, standards and their respective job descriptions. *Id.* at 1345.

The Board did not consider the job description in its analysis. And this Court acknowledged the Board's general concern that, "standing alone, [such] 'paper' evidence would likely not be sufficient to support a finding of supervisory status." *Id.* (citation omitted). "As the Board has properly recognized, to base supervisory status solely upon . . . job descriptions would enable employers to design their policies in a manner that could effectively deprive non-supervisory employees of their right to collective bargaining under the Act." *Id.*

But this Court went on to state that the Board's concern in this regard, "however, does not command an impossibly high evidentiary standard for

establishing 'prospective' consequences for the putative supervisor. [J]ob descriptions, . . . when corroborated by live testimony or other evidence, are obviously relevant to the issue of responsible direction." *Id.*

The Court then considered the unrebutted testimony of Lakeland's director of nursing that an LPN would be "written up" for failing to ensure that a CNA complied with all applicable standards. *Id.* at 1344-1346. Contrary to the Board, this Court held that testimony should be considered and that the LPNs had the authority to responsibly direct the CNAs, even though there was no evidence that any LPN had ever been disciplined or discharged because of a failure to supervisor a CNA. As the Court stated:

> The Board disregarded this and other areas of testimony as "purely conclusory." They were not. As noted above, under the Act, an employer may establish "responsible" direction by presenting evidence of prospective consequences. . . . By focusing on the lack of examples where an LPN "*has experienced* . . . material consequences to her terms and conditions of employment . . . as a result of his/her performance in directing CNAs," (emphasis added) the Board effectively ignored its own observation in *Oakwood* that a showing of prospective consequences is sufficient under the statute.
>
> Applying the framework of *Oakwood*, we conclude that the record as a whole establishes that the LPNs' interests are "aligned with management" and that the LPNs *would be* held accountable for the poor performance of their CNAs. There was no evidence directly refuting this accountability. Accordingly, the Board's conclusion that the LPNs do not responsibly direct CNAs was not supported by substantial evidence.

Id. at 1346 (italics original).

Exactly like *Lakeland*, G4S presented a job description that "strongly indicates" that lieutenants "are accountable for the performance of the" security officers. *Id.* at 1345. Specifically, the job description states that lieutenants, also referred to as security field supervisors, supervise the security officers. (Volume II, Tab 33, §1.1.) It also states that lieutenants must ensure that officers properly perform their duties and correct any deficiencies in officers' behavior, attitude or attentiveness. (*Id.* at §§ 4.1.3, 4.1.14, 4.1.21.)

Also exactly like *Lakeland*, although there is no evidence that any lieutenant has been disciplined for the poor performance of a subordinate, G4S presented unrebutted testimony, from a higher level manager, that the lieutenants would be subject to discipline if their subordinate officers did not perform in accordance with required standards. (Transcript at 331.) As such, exactly like *Lakeland*, based on this unrebutted testimony – and the job description - this Court should hold the Board's conclusion that such testimony is purely conclusory is wrong. And that the Board's conclusion that lieutenants do not responsibly direct is not supported by substantial evidence.

In addition, unlike *Lakeland*, there is further unrebutted evidence in this case demonstrating lieutenants are held accountable for the performance of their officers. As explained above, there came a time when G4S reviewed all managers at this site, and all of its other FP&L sites. As stated in the outline of the

Leadership Program that started the review process, one of the criteria to be considered was the performance of the supervisors' respective teams. (Volume III, Tab 35.) As explained in greater detail in the reviews conducted of each supervisor, the scope of the review of that criterion was based on an evaluation of the performance of the overall team led by that supervisor, the individual performance of each team member, and the members' disciplinary records. (*Id.*, Tab 36.) Each supervisor was then scored on each of those items, as well as the rest of the criteria. Then, the supervisors in the bottom 20%, which included Frazier and Mack at this site, were automatically slated for further review - a process that ultimately resulted in the termination of everyone in the bottom 20% at this site. (Transcript at 98.)

As such, the undisputed record evidence shows that all of the lieutenants, including Frazier and Mack, were scored on the performance of their subordinates and held accountable based on that performance in a tangible way. For this reason, as well, this Court should hold that the Board's conclusion that the lieutenants do not responsibly direct is not supported by substantial evidence on the record as a whole.

B. The Board's Failure to Consider Important Evidence

"When reviewing an order of the Board, [the Court is] 'bound by the Board's factual findings if they are supported by substantial evidence on the record

as a whole.'" *Lakeland*, 696 F.3d at 1335 (internal citations omitted). "'In examining the record for substantial evidence, this court is not a mere rubber stamp of the Board. Rather, [the court] is obligated to ensure that the Board's decision are supported by substantial evidence. Thus, the board cannot rest its conclusions on a scintilla of evidence or even on any amount of evidence that is less than substantial.'" *Northport Health Services, Inc. v. NLRB*, 961 F.2d 1547, 1550 (11th Cir. 1992) (internal citations omitted).

"'Of course, the Board may not base its decision on facts that are not supported by the record. Further, the Board cannot ignore the relevant evidence that detracts from its findings. When the Board misconstrues or fails to consider important evidence, its conclusions are less likely to rest upon substantial evidence.'" *Id.* at 1550 (internal citations omitted).

But that is precisely what took place in this case – the Board failed to consider important evidence. There is unrebutted record evidence as to the following, all of which was ignored by the Board or, at the very least, not considered in its analysis set forth in its Decision:

- G4S has numerous programs pursuant to which officers, lieutenants and everyone else may (and are encouraged to) raise exactly the types of concerns raised by Frazier and Mack.
- Under those programs, everyone – including lieutenants - is required to raise such concerns. In fact, this is a job responsibility and someone who fails to do so could be held accountable for that failure.

- Under those programs, lieutenants are required to attempt to resolve any concerns brought to their attention, and which are within their power to resolve.
- For any concerns they cannot resolve, lieutenants are required to relay up the chain any other concerns brought to their attention. (As such, when the Board concluded that G4S terminated Frazier and Mack for raising concerns on behalf of themselves and others, the Board determined that G4S terminated them for performing a specific task that G4S expected and required them to perform.)
- Everyone raised such concerns through the various programs and at security briefings, just like Frazier and Mack.
- Frazier and Mack had been raising such concerns throughout their entire employment at this site - over 20 years for Frazier and more than 7 years for Mack.

In addition, the Board failed to consider or address the context in which G4S created the Leadership Reviews containing the language on which the Board places such great weight for its finding of direct evidence of unlawful intent and/or animus.

The Board has recognized that, just because an individual is not a supervisor under Section 2(11) of the Act does not mean that individual might not be considered a non-statutory supervisor or have management responsibility out in the "real world." For example, in *Buchanan Marine*, 363 NLRB No. 58 (2015), the Board touched on this dynamic. In explaining its conclusion that tugboat captains were not statutory supervisors, the Board explained its conclusion did not mean "that [the Captains'] commands need not be obeyed by the crew, or that the Employer may not discipline crew members for failing to obey them. . . ."

In other words, an employer can still consider a person to be a "real world" supervisor or part of management even if that person is not a statutory supervisor. And the unrebutted record evidence in this case demonstrates that, even if Frazier and Mack were not statutory supervisors:

- G4S viewed lieutenants as real world supervisors and part of management;
- Lieutenants understood they were "supervisors;"
- The union and officers viewed them as "supervisors;"
- Lieutenants were part of the management team;
- G4S could hold them accountable for failing to fulfill their management responsibilities;

When the Board looks at the language in the Leadership Reviews for Frazier and Mack, on which it relies for its conclusions, it refuses to consider all of the above unrebutted facts as the context in which that language appears. Since it failed to consider relevant evidence in this regard, its conclusions are not entitled to deference.

Regarding Frazier, the Board goes so far in ignoring this context as to conclude that the language in the Leadership Review constitutes direct evidence that G4S terminated him for raising concerns on behalf of security officers. This is the Board's analysis under *Burnup & Sims, Inc.*, 256 NLRB 965 (1981).

But how can this language so obviously constitute direct evidence of G4S's intent when there is also language in the same review commending Frazier for appropriately challenging management decisions. How can this language so

obviously be direct evidence when considered in the context outlined above – where Frazier was expected as part of his job to raise concerns on behalf of himself and the officers? Also, if this language was so obviously direct evidence of unlawful intent, how come the General Counsel did not make this argument to the ALJ, but the ALJ raised it on remand, *sua sponte* and with very little discussion.

If the *Burnup and Sims*, *supra*, analysis does not apply to this case, then the Board moves on to the normal burden shifting analysis under *Wright Line*, 251 NLRB 1083 (1980). Under this analysis, there has to be animus to establish a prima facie case.

The Board concluded that the language in the Reviews demonstrates that G4S had animus against Frazier and Mack for raising concerns on behalf of themselves and others. Once again, in doing so, the Board ignores all of the facts and context outlined above regarding the environment at this work site in which all lieutenants (and all other employees) were encourage and required to raise concerns on behalf of themselves and others.

Further, if a prima facie case of unlawful conduct was established, then G4S is supposed to have the opportunity to rebut that prima facie finding, by demonstrating it would have terminated Frazier and Mack regardless of their protected activities. If nowhere else in the Board's legal analysis of this case, this is where all of the record evidence presented by G4S on the underlying context is

relevant. But all of it was ignored by the Board including the following factual questions: Why were Frazier and Mack singled out for termination when "everyone else" was raising concerns in the same way? And why at that time, after Frazier had raised such concerns for 20 years and Mack for 7 years?

If the standard of review in this circuit dictates that the Board's conclusions are less likely to rest upon substantial evidence when the Board fails to consider important evidence, how can the Board's conclusions in this case stand when the Board ignored all of these facts?

VII. CONCLUSION

Based upon the foregoing, the Board's decision is not supported by substantial evidence on the record as a whole, nor is it supported by controlling precedent. As such, this Court should grant G4S's Petition and vacate the Board's decision or, in the alternative, remand this case to the Board for further proceedings addressing all of the relevant facts outlined above.

By: */s/Fred Seleman*

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQURIEMENTS, AND TYPE-STYLE REQUIREMENTS

This document complies with the word limit of FRAP 40(b)(1) because, excluded the parts of the document exempted by FRAP 32(f), this document contains 4,861 words.

This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6).

/s/Fred Seleman
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Dated: January 5, 2017

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2017, I caused to be served a true and correct copy of the within and foregoing **PETITIONER/CROSS-RESPONDENT'S PETITION FOR PANEL REHEARING** via the Court's electronic case filing system which will automatically serve the following counsel of record:

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EXHIBIT A – COPY OF OPINION SOUGHT TO BE REHEARD

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 15-13224

Agency No. 12-CA-026644

G4S REGULATED SECURITY SOLUTIONS,
A Division of G4S Secure Solutions (USA) Inc.,
f.k.a. The Wackenhut Corporation,

Petitioner - Cross Respondent,

versus

NATIONAL LABOR RELATIONS BOARD,

Respondent - Cross Petitioner.

Petitions for Review of a Decision of the
National Labor Relations Board

(November 21, 2016)

Before TJOFLAT and HULL, Circuit Judges, and BYRON,* District Judge.

PER CURIAM:

Appellant G4S Regulated Security Solutions ("G4S") appeals from the order of the National Labor Relations Board (the "Board"). On charges filed by two former G4S employees, the Board's General Counsel issued a complaint against G4S. The complaint alleged that G4S suspended and discharged the two former employees for engaging in "protected concerted activities," in violation of section 8(a)(1) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 158(a)(1). The two former employees are Thomas Frazier and Cecil Mack.

The Administrative Law Judge ("ALJ") conducted a three-day hearing, reviewed the parties's briefing, and issued a sixteen-page Decision. The ALJ dismissed the complaint, finding that the employees were "statutory supervisors" under section 2(11) of the Act and not entitled to the Act's protection.

The Board's General Counsel filed an administrative appeal, and on September 28, 2012, a panel of the Board reversed the ALJ. The panel held that the former employees were not statutory supervisors and remanded to determine whether G4S had unlawfully suspended and discharged them in retaliation for engaging in their protected activity. On remand, the ALJ issued a November 16, 2012 Supplemental Decision, finding that G4S had done so, in violation of the Act.

* Honorable Paul G. Byron, United States District Judge, for the Middle District of Florida, sitting by designation.

G4S then appealed this Supplemental Decision. On April 30, 2013, a panel of the Board affirmed.

On June 26, 2014, the United States Supreme Court, in NLRB v. Noel Canning, 134 S. Ct. 2550 (2014), invalidated President Obama's recess appointments for two of the appellate panel Board members in this case. Following Noel Canning, the Board set aside its September 28, 2012 and April 30, 2013 Board decisions. A panel consisting of new Board members was then created, and it reviewed de novo the ALJ's Decision and Supplemental Decision. In a June 25, 2015 Decision and Order, the new Board panel affirmed the ALJ's findings that the former employees were protected by the Act and that G4S had violated the Act in discharging the former employees.

G4S filed a petition for review of the June 25, 2015 Board Decision and Order in this Court. On August 27, 2015, the Board filed a cross-petition for enforcement.

After review of the record and with the benefit of oral argument, the Court concludes that substantial evidence supports the Board's findings of fact and that there was no reversible error in the Board's conclusions of law. We accordingly deny G4S's petition for review, grant the Board's cross-petition for enforcement, and affirm the order of the Board.

AFFIRMED.